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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,772	10/17/2001	Gustav Levander	P02232US0-(1	1118

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 08/27/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-12

Office Action Summary

Application No.

09/889,772

Applicant(s)

LEVANDER ET AL.

Examiner

Sandra M. Nolan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-12 and 14-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Pursuant to entry of any amendment in the response dated 23 June 2003 (Paper No. 11), claims 1-8, 10-12 and 14-34 are pending.

Rejections Withdrawn

2. The 35 USC 112 rejection of claims 1-8, 10-12 and 14-34 as indefinite, as expressed in section 10 of the 31 March 2002 office action (Paper No. 10), is withdrawn in view of the amendments to the claims in Paper No. 11.
3. The 35 USC 103 rejection of claims 1-3, 5-8, 10-12 and 14-34 as unpatentable over Cubbage et al (US 5,804,215) in view of Kashimara et al (US 5,326,848), as set out in section 12 of Paper No. 10, is withdrawn in order to apply the new grounds of rejection hereinbelow.

Allowable Subject Matter

4. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art fails to teach polytrimethylene naphthalate as a barrier material.

New Rejections

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5-7, 10, 14, 16-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kashimura et al (US 5,326,848).

Kashimura teaches films (col. 10, line 50) and laminates (col. 27, line 37, col. 32, line 56 and col. 33, lines 6-7) containing liquid crystal polyesters (abstract). The polyesters are used in gas barrier packaging (col. 10, lines 40-41) and have superior gas barrier properties to polyethylene terephthalate (PET) (col. 1, lines 28-37). Packaging made from the polyesters has oxygen barrier properties that are 20+ times better than PET (col. 13, lines 17-20). The polyesters contain ethylene glycol (col. 5, lines 27-31) and are made from 2,6-naphthalene dicarboxylic acid or an ester-forming derivative thereof (col. 5, lines 47-52). Hydroxy-naphthoic and hydroxy-benzoic acids can be present (col. 10, lines 58-63). The polyesters are used in blends and multilayer composites containing polyethylene, polypropylene, PET or polyethylene naphthalenate (PEN) (col. 13, lines 41-49).

The nicotine barrier properties of the films and laminates of Kashimura would be inherent, given the chemical identity of the polymers used to make them.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1-3, 5-8, 10-12 and 14-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt et al (WO 91/09731) in view of Kashimura.

Hunt et al teaches packaging for nicotine-containing products (title), such as chewing gum (page 1, line 30). The packaging has an aluminum barrier layer (page 13, lines 22-23) and a PET protective layer (page 13, lines 29-31).

Hunt fails to teach the use of the claimed polyesters in its packaging.

Kashimura is discussed above. Note that it teaches that its polyesters have better barrier properties than PET (col. 1, lines 28-37; col. 13, lines 17-20).

The references are analogous because they both deal with packaging materials.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the liquid crystal polyesters and polymer blends of Kashimura instead of the PET in the packaging of Hunt in order to attain superior barrier properties.

The motivation to employ the liquid crystal polyesters of Kashimura in the packaging of Hunt is found at col. 1, lines 28-37 of Hunt, where the barrier properties of its materials are said to be better than those of PET.

It is deemed desirable to make barrier packaging for nicotine-containing products having superior barrier properties in order to enhance their storage stability.

The use of the packaging suggested by the combination of Hunt and Kashimura to contain nicotine products other than gums (per claim 11) is deemed a matter of intended use and does not serve to distinguishing the packaging materials from those suggested thereby.

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Response to Arguments

9. Applicant's arguments with respect to claims 1-3, 5-8, 10-12 and 14-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
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25 August 2003